

## WALPOLE PLANNING BOARD MINUTES OF OCTOBER 1, 2015

A regular meeting of the Planning Board was held on Thursday, October 1, 2015 at 7:00 p.m. in the Main Meeting Room, Town Hall. The following members were present: John Conroy, Chairman; Richard Nottebart, Vice Chairman; John Murtagh, Clerk; Elizabeth Gaffey, Richard Mazzocca, Elizabeth Dennehy, Community Development Director; and Michael Yanovitch, Building Commissioner.

7:04 p.m. Mr. Conroy opened the meeting.

**Minutes:** Mr. Conroy moved to accept the minutes of September 3, 2015. Motion seconded by Mr. Nottebart. Mr. Nottebart stated that the name of the woman who lives at 15 Eastover Road is Ann Bielenin. He asked that the minutes be corrected to reflect this name. Motion voted 4-0-0 with that clerical change. Mr. Conroy moved to accept the minutes of September 17, 2015. Motion seconded by Mr. Nottebart and voted 4-0-0.

**Olmsted Estates Form F Covenant/Endorsement of Subdivision Plans:** Mr. Conroy read an email received from town counsel, Ilana Quirk, dated October 1, 2015 stating that her review of the documents will be completed prior to and in time for the Planning Board October 15, 2015 meeting. Atty. O'Brien stated that the Form F covenant they used is the board's form and he respectfully requests that the board approve it. He stated it has been 140 days that this has been going on. Mr. Conroy stated it is not our fault and there is not much we can do. Mr. Murtagh asked for an opinion from Ms. Dennehy. She stated that the board was going to hold a special meeting, but since then the applicant lost their buyer and had to change a few things.

Ms. Gaffey arrived at 7:09 p.m.

Ms. Dennehy stated the documents were sent to town counsel in a timely manner so she is not sure why the board would want to proceed without her input. This puts the board in an uncomfortable predicament. Mr. Murtagh stated it doesn't make the board look good. Mr. McEntee stated to be fair they lost the buyer because of their inability to produce an endorsed plan. The changes were to erase three deed references and now they are back to a standard Form F covenant. Atty. O'Brien stated because it is the board's form, he would hope that the board members would have known it conformed when they read it. If they only fill in the blanks on the board's form, it should be right. Mr. Conroy stated this started last February and there have been at least five changes. Every time it changed was not because of us. Mr. McEntee stated there is no new buyer. It is now just the three buyers. Mr. Conroy stated our standard procedure is that town counsel reviews the covenant. Atty. O'Brien stated he doesn't object to that at all, but he does object that the board or town counsel hasn't been able to tell us before the next meeting so they can address any issues. Mr. Conroy stated let's go back to when emails were flying behind our back. We are not working for you, which is why we got upset in May. Atty. O'Brien stated he understands that.

Michael Yanovitch, Building Commissioner, arrived at 7:15 p.m.

Atty. O'Brien asked if there is a diminutive change between now and October 15 would the board tell them so they can make that change. If it is fine the way it is, then fine. He is just asking for reasonable communication. Mr. Conroy stated that because they are using our form, there shouldn't be a problem. Atty. O'Brien stated this is just a reasonable request between the applicant and the board. Mr. Conroy stated you will get something in advance of the public hearing. Atty. O'Brien agreed. Mr. Nottebart stated that fourteen days ago we agreed that we would have a special meeting. We never had that meeting. What happened? Ms. Dennehy stated they lost the buyer and everything changed. Mr. Nottebart stated it seems reasonably fair that they want to come in before the next meeting. We can't keep this thing going forever and ever. If this goes to Kate, are you saying that she can't tell them? Mr. Nottebart stated he is not sure that Atty. O'Brien and Sean McEntee are not being sincere in their efforts. Mr. Conroy stated we got this information on Monday. Mr. Nottebart stated that just because they lost their buyer, is this that much of an additional burden on Ilana Quirk? Mr. Mazzocca stated he is willing to do what we agreed to two weeks ago. He will come in and vote on this. He is more comfortable is the covenant has been approved by town counsel. If she gives her okay, at least three board members will come in. He has concerns about a resident that has put his life on hold, like the Olmsteds. He has financing lined up, so to help the Olmsteds out, he is willing to come in before it is too late with winter coming. We rely on town counsel for her input though. Atty. O'Brien stated he would like that conveyed to town counsel. Mr. Nottebart agrees with Mr. Mazzocca. He doesn't want to be responsible for holding people up. He had asked Kate several times why we didn't have that meeting and here we are now. He is surprised that we are back here now two weeks later. He asked Mr. Conroy how we push town counsel. Mr. Conroy stated if there were any favors, they were used back in May. Mr. McEntee stated he has offered to pay to have Ilana Quirk here. If the board has allowed the two attorneys to sit down and hash through this, it would have been done in two minutes. Mr. Conroy stated we have a bill of more than a couple of grand from town counsel. Mr. McEntee asked if the board would ask town counsel tomorrow to review this. Mr. Conroy stated they lost their buyer because they couldn't sell to him. You had a client that wanted to be assured this could move ahead. Mr. Murtagh suggested that Ms. Dennehy work with town counsel on this. Ms. Dennehy agreed if that is what the board wants. Mr. Murtagh stated this is like a 3-ring circus. Ms. Gaffey told Mr. McEntee that he must have known that the time limit with their buyer was coming to a close. Mr. McEntee stated not really. Ms. Gaffey stated we agreed to have that special meeting and feels we already jumped through hoops and now you are asking again for a special meeting. We waited Monday and Tuesday for a phone call and never got it. You are here tonight with a new covenant that we have never seen. She stated they need to be fair to us. Mr. McEntee stated it is standard language. Further, they didn't know there was a deadline. Atty. O'Brien agreed they didn't know there was a deadline. Mr. Conroy stated he finds it odd that they had no idea their buyer could back out. Atty. O'Brien stated they have a right to back out, but he had no idea. Mr. Conroy stated he doesn't believe they wouldn't know what was going to happen. Mr. Mazzocca thinks Mr. Murtagh had a good idea and asked Ms. Dennehy to contact town counsel and when her opinion comes in, the board can hold a special meeting. Ms. Dennehy asked if she is asking Atty. Quirk to expedite her review before the October 15 meeting. Atty. O'Brien stated they are not asking for special favors. If it can't be resolved, then they will wait for two weeks.

Mr. Nottbart moved to ask Ms. Dennehy to call Atty. Ilana Quirk to see if she can do a quick review and communicate back and forth before October 15 and also that the board would hold a special meeting. Motion seconded by Mr. Murtagh and voted 3-2-0 (Nottbart, Mazzocca, Murtagh voting in the affirmative; Gaffey, Conroy voting in the negative).

**7:35 p.m. Kingswood Estates Continued Hearing:** Mr. Conroy moved to continue this hearing to February 4, 2016 at 7:15 p.m. as requested by the applicant's attorney, Gerald Blair, Sharon, MA. Motion seconded by Mr. Nottbart and voted 5-0-0. Mr. Conroy moved to accept an extension of time up to and including March 4, 2016 as requested by the applicant's attorney, Gerald Blair, Sharon, MA. Motion seconded by Mr. Nottbart and voted 5-0-0.

**Winter Estates Subdivision:** Mr. Conroy moved to delete special condition #5 from the board's original decision as requested by John Walsh, Walsh Bros., 11 Saddle Way, Walpole, MA and as recommended by Margaret Walker, Town Engineer. Motion seconded by Mr. Nottbart and voted 5-0-0.

**7:40 p.m. Zoning Articles for 2015 Fall Town Meeting:** Michael Yanovitch, Building Commissioner and Elizabeth Dennehy, Community Development Director presented Articles 14-28 as advertised for the 2015 Fall Town Meeting. Mr. Conroy read comments that were received from Landis Hershey, Conservation Agent and Margaret Walker, Town Engineer.

**Article 14:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 14 as advertised.

**Article 15:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 15 as advertised.

**Article 16:** Cliff Snuffer, Precinct 2 stated that a colleague of his asked him to represent with regard to this article as they are afraid they won't have a voice. He will most likely talk against this at town meeting. Mr. Yanovitch stated Section B.1.f addresses hazardous material and there will most likely have to be a special permit request. Mr. Snuffer stated that innocent things happen and this person just wants to make sure she has a voice. Mr. Murtagh stated that just the fact that this is in the WRPOD triggers a special permit. John O'Leary, Precinct 3 asked if this is only the WRPOD and Mr. Yanovitch usually yes. Mr. Mazzocca asked if there are LM areas in the WRPOD and Mr. Yanovitch stated yes. Mr. Mazzocca stated our primary concern is to protect the townspeople. Mr. Yanovitch stated it will be messy to take some of these out during town meeting.

Josette Burke, Precinct 4 and Finance Committee Member stated if the board is making an Amendment, the board should know that the Finance Committee did not vote on any of the Articles, but is scheduled to do so on October 15<sup>th</sup>. She asked that FinCom be given the Board's vote before October 15<sup>th</sup>.

Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 16 as advertised, with a modification to line 5B.4.dd, leaving **SPZ under the LM and IND headings**.

**Article 17:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 17 as advertised.

**Article 18:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 18 as advertised, with a modification to the superscript note following the word “bar”, modifying it to read “bar<sup>2</sup>” rather than “bar<sup>3</sup>”.

**Article 19:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 19 as advertised.

**Article 20:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 20 as advertised.

**Article 21:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 21 as advertised.

**Article 22:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 22 as advertised.

**Article 23:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 23 as advertised.

**Article 24:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 24 as advertised.

**Article 25:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 25 as advertised.

**Article 26:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 26 as advertised.

**Article 27:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 27 as advertised.

**Article 28:** Moved, seconded and voted **5-0-0** to recommend **Favorable Action** on Article 28 as advertised.

**Article 29:** Joe Moraski, Precinct 8 was present to speak to Article 28. He explained the background and asked that there be a one year temporary moratorium put in place. He had told the Finance Committee that he believed this article was legal even though it has not been reviewed by town counsel yet. There were no fatal flaws, but she did say they needed a specific end date. Right now, the Finance Committee has a motion to remand this back to him. He will file a substitute motion with an end date of October 31, 2016. Mr. Moraski stated if the Planning Board doesn't recommend favorable action, this article cannot move forward. Mr. Conroy stated we are only the conduit for a private petition. Favorable action by us doesn't necessarily stop this from going forward. He suggested that someone just make a substitute

motion at town meeting. Mr. Nottebart stated that Mr. Moraski is looking for Planning Board support no matter how he gets it, individually or as a board. Mr. Nottebart stated he agrees with Joe regarding OSRD. Mr. Moraski stated he wants this to be a very transparent process. The Planning Board should hold the public hearing and let people come in. Then, it is up to the Planning Board to instruct Ms. Dennehy to make the changes and come up with the draft and a new Section 10. Then, it becomes a Planning Board article in the Fall of 2016. Mr. Nottebart stated he would be willing to work on that if the board agrees.

Josette Burke, Finance Committee, stated they were in general supportive of what Joe presented. It was not legal for the Finance Committee to make a finding according to Town Counsel without an end date. Therefore, they voted no action. They don't have the authority to put the end date in for Mr. Moraski. However, the general consensus was they were in favor of what he was attempting to do. Mr. Conroy read town counsel's opinion. Mr. Snuffer stated that the Finance Committee still has scheduled hearings and they can rescind and reconsider their vote. Ms. Gaffey questioned the hearings. Mr. Moraski stated there could be multiple hearings or just one. They would hold the number of hearings that the Planning Board wanted on this. Ms. Gaffey asked if this impacts anyone that has come before us and Mr. Moraski stated this will not have any effect on anything the board voted previously whatsoever. If the owner of the special permit doesn't do anything with it within two years, he will be subject to this. He would like the process as open and transparent as possible. Mr. Mazzocca asked if we can do something similar with Article 16 and Mr. Conroy stated yes. You failed to address who is going to do this. He suggests you and an OSRD Study Committee although nothing mentions the Planning Board. You can print out the issues and then you form a committee and present to us. Mr. Moraski stated he doesn't want to start a committee of people who have a problem with OSRD to begin with. Mr. Nottebart asked if he would entertain the board straightening out the issues. Mr. Conroy stated you need people to come in ahead of time. Mr. Nottebart asked if he wants us to solicit comments and who would hold the meetings. Mr. Moraski stated no one could come before the board during that time as they are in the process of redoing this section.

Moved, seconded and voted **3-0-2** to recommend **Favorable Action** on Article 29 as advertised, **with the addition of a definitive end date to the proposed temporary moratorium of October 31, 2016.**

**Article 34:** Mr. Conroy read the public hearing notice. John O'Leary was present to speak to this article. He was the first signatory on the petition which is why he is here before the board tonight. He stated it makes sense to have the town and the bylaw be in sync. Mr. Mazzocca stated he was confused. He feels it should say "from" not "to" and therefore doesn't think this is worded correctly.

Josette Burke, Finance Committee stated they voted No Action on this article. Ms. Gaffey stated she spoke with Bill Hamilton and agrees with Mr. Mazzocca, although she knows what the intent was.

Mr. O'Leary stated he will meet with Bill Hamilton to make this flow better. Mr. Nottebart asked if there is any input from Sewer and Water. He is in favor of protecting the aquifer.

Bill Abbott, Sewer & Water Commission, stated he was on vacation when the Sewer and Water Commission discussed this, but they were also confused. Mr. Murtagh stated that Bill Hamilton had told him the wells will run dry, so he is in favor of this. Josette Burke stated that no one showed at the Finance Committee meeting to explain this and therefore they voted 14-0 for no action. Mr. Conroy told Mr. O'Leary he knows he got this by default and next time he should remember to sign his name on the next line down. He thinks this is now more confusing and doesn't believe this will pass the Attorney General's review. He understands what they are trying to do, but the AG will not. You need to state in the article: delete in its entirety and add what they are trying to change. The intent is one thing, but the wording is incorrect. Mr. Conroy asked if town counsel reviewed this and Ms. Dennehy stated she didn't see anything from her. Mr. Conroy stated there might be something with the Selectmen from her now. Mr. Snuffer stated this is the last town meeting article and it is very difficult because of the complexities. Bill Abbott stated he has a number of issues with this. It is more than a simple minor change. He doesn't agree with the word "zone" and explained why he thinks this article is incorrect. Mr. Conroy questioned "greater than 40' or less than 40'" and Mr. O'Leary stated he doesn't know. Mr. Nottebart stated that Bill Hamilton has such a passion for this and he doesn't want to mess this up. Mr. Abbott thinks this is flawed and makes it more confusing. It doesn't line up with the way the State uses the word "zone".

Moved, seconded and voted **5-0-0** to recommend **No Action** on Article 34 as advertised.

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:30 p.m.

Respectfully submitted,

John Murtagh, Clerk

Approved on 11/5/15